

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2305 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PANCHAL PRATAPCHAND CHATRAJI

Versus

STATE OF GUJARAT

Appearance:

MS KUSUM M SHAH for Petitioner

Ms. Katha Gajjar, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 13/01/2000

ORAL JUDGEMENT

This petition under Articles 226 and 227 of the
Constitution read with Articles 14 and 16 thereof has
been filed for appropriate writ, order or direction

questioning the order of Special Secretary, Revenue Department (Appeals) dated 25.2.1988 in Revision Application No.Land:BNS:68/87 and letter dated 9.9.1987 issued by Mamlatdar, Tharad. Banaskantha.

2. As per the case of the petitioner, he is a Blacksmith by profession and he has got no land to carry out the work as Blacksmith. He made an application to the Collector, Banaskantha to grant him land on lease basis. That accordingly by order dated 30.1.1978, land bearing survey No. 323/1 near S.T. stand, Tharad was granted to the petitioner on seven years' lease basis for the purpose of carrying out the work as Blacksmith on the terms and conditions mentioned in the lease deed. That there is a clause in the lease deed that the period of lease can be extended on completion of seven years. That the petitioner, on getting the land on lease obtained a loan of Rs.20,000/- from Bank and purchased welding machine, drilling machine and other instruments to carry out his work as Blacksmith. That the petitioner mainly prepares iron, Grill, gates, steel furniture like cots and other job work and it is registered as small scale industry with the State of Gujarat. That the rent was being regularly paid by the petitioner in accordance with the lease deed.

3. That the period of lease was to expire on 30.1.1985 and, therefore, the petitioner made an application dated 25.6.1984 to the Collector requesting him, for the reasons stated in the application, to sell the said land under lease to the petitioner at the market rate. That by another application dated 26.7.1984, the petitioner requested the Collector to renew the lease for further seven years, if it was not possible to sell the same to him. However, the said request was not allowed. Thereafter the petitioner preferred Revision Application before the State which was heard by the Addl.Chief Secretary, Revenue Department (Appeals). The said authority heard the petitioner and by order dated 25.2.1988, rejected the said Revision of the petitioner. The petitioner challenges the said decision of the State Government on various considerations. The petitioner contends that the said decision of not renewing the lease is unjust, improper and illegal since there is a specific clause for renewal of the lease deed and there is no reason for not renewing the same. That the authorities have failed to consider the case of the petitioner and the petitioner is a 'hand to mouth' person and has taken loan to establish a small scale work for his maintenance. That he has 10 members in his family to maintain. That the respondent also failed to consider the fact that a

loan of Rs.20,000/- is required to be repaid to the bank which could be done only if he is permitted to carry out the work as Blacksmith. That the impugned order is discriminatory and violative of Articles 14 and 16 of the Constitution of India, inasmuch as one Ratansinhbhai Patel, who was also granted lease of land being part of Gaucher Survey No. 323/1 which is adjoining to the land of the petitioner, has been granted land on permanent basis in accordance with the order placed at Annexure 'E'.

4. According to the petitioner, two different treatments have been extended by the State. One for the petitioner and another for the said occupant. That so far as the petitioner is concerned, the lease has not been extended and the land has not been sold to the petitioner. On the other hand, the said piece of land has been sold to the said occupant. Therefore, the aforesaid action, according to the case of the petitioner, is illegal and violative of Articles 14 and 16 of the Constitution. The petitioner, therefore, challenges the said decision by way of this petition.

5. I have heard Ms. Kusum Shah, learned Advocate for the petitioner and Ms. Katha Gajjar, learned AGP for respondent No.1 and have perused the papers. The facts are not very much in dispute. It is an admitted position that the piece of land bearing survey No.323/1 was given on lease to the petitioner for carrying out his business as Blacksmith. The period expired and extension was sought but it was refused by the Collector. Revision Application against the said refusal was also rejected. Same way the petitioner's prayer for allotment of land on permanent basis has also been refused. This fact cannot be disputed at all.

6. Learned Advocate for the petitioner has contended that the State Government has committed error in extending two different treatments to two persons placed under similar situation. According to the case of Ms. Shah, the petitioner's land is from survey No.323/1. That just adjacent to the said land of the petitioner, there is another land bearing survey No.323/1. That one Ratansinhbhai Patel was given the said land for running his business of Bensaw. Both the lands are adjacent to one another, yet as per the case of the petitioner, Ratansinhbhai has been allotted the said land on permanent basis and the similar request of the petitioner has been turned down by the State.

7. Learned AGP has contended that the said action on

the part of the State cannot be treated to be illegal or wrong. Firstly, it has to be considered that the State has not filed affidavit and has not placed any material on record in support of defence.

8. At the same time, learned AGP has argued that the case of Ratansinhbhai has been considered to be a special case. There is no reason assigned by the learned AGP for treating the case of Ratansinhbhai as a special case. She is unable to show as to what is the difference between the case of Ratansinhbhai and that of the petitioner. Unless some reasonable explanation is set out, it would be difficult to hold that these two persons are not at par since their lands are adjacent to one another.

9. Learned AGP has next contended that the petitioner has not used the land for the purpose for which it was leased to him. It is her case that the petitioner has been using the land in question for foundry purpose. This can be gathered from page 18 of the order of Government. It seems from page 3 of the order that the learned Advocate for the petitioner had argued before the Government that the petitioner had installed a foundry on the said land and therefore, it has been contended that the foundry has been installed in violation of the order of the Collector.

10. On this point, Ms. Shah has argued that the learned Advocate for the petitioner who argued the matter before the Government had not properly explained the position. That, there is no foundry but there is a furnace to give heat to iron for preparing doors, windows etc. That in fact, it is not a foundry but it is a small furnace. During the course of his argument, it was wrongly said that the petitioner has installed a foundry on the land allotted to him on lease. In fact, instead of accepting the said word, the authority should have verified the position on the spot. It seems that that has not been done in the present case.

11. On the other hand, Nagar Palika, Tharad has issued a certificate dated 21.12.1999. The learned Advocate for the petitioner has placed it on record and it is ordered to be kept on record. This certificate shows that the petitioner has been using the said land for making agricultural equipments. However, there is specific averment that no foundry has been installed on the said land. This properly explains the position on the spot.

12. Once it is found that there is no foundry installed by the petitioner on the said land, it cannot be said that the petitioner committed violation of terms and conditions of the order under which the land was given on lease to the petitioner.

13. On careful perusal of the order of the Government dated 25.2.1988, it is gathered that there is no other reason given for not extending the lease and not allotting the land on permanent basis to the petitioner.

14. In para 4 it has been stated in the order of the Government that the land is Gaucher land and it cannot not be given to the petitioner for the purpose for which it was leased to the petitioner. The land adjoining to this land has been given to one Ratansinhbhai on permanent basis. If that land has been given to Ratansinhbhai on permanent basis, then there is no reason as to why this land cannot be given to the petitioner either on lease or on permanent basis. It is more so when the petitioner is in occupation of this land since last about more than 20 years. It is not the case of the State Government that someone complained before the State that the land was not used by the petitioner for the purpose for which it was leased to him. No such complaint appears to have been received by the State against the aforesaid user of the land. Under the circumstances, I am of the view that the State appears to have extended discriminatory treatment between the petitioner and Ratansinhbhai without any reasonable explanation. At least the case of the petitioner for extending the period of lease was required to be considered carefully. Even if there was submission that a foundry was installed on the said land contrary to the terms and conditions of the order of lease, the said fact should have been verified by the State Government before passing final order in the said matter.

15. Under the circumstances, I am of the view that proper procedure has not been followed and the State Government has decided the matter on extraneous considerations. Therefore, the said action of the Government cannot be upheld in this matter.

16. So far as Ratansinhbhai is concerned, the order passed in the Revision Application on 13.11.1998 has been produced on record at pae 22. There the State Government has passed order directing the Collector to consider the case of Ratansinhbhai for allotment of land to him on permanent basis. Similar action could be taken in respect of the land allotted to the petitioner since both

the lands are adjoining to one another.

17. Under the circumstances, I am of the view that the State Government has committed illegality in rejecting the Revision Application of the petitioner on certain extraneous consideration. In fact, the petitioner's case should have been considered carefully and objectively. Even the fact that the petitioner was in possession of the said land since 1978 was also required to be considered by the State while entertaining the Revision Application of the petitioner.

18. To that extent, the State Government's order dated 25.2.1988 is illegal and is required to be quashed. Under these circumstances, it is hereby ordered and directed that the order dated 25.2.1988 passed by the Special Secretary, Revenue Department (Appeals) in Revision Application No.Land:BNS/68/87 and the letter issued by the Mamlatdar, Tharad dated 9.9.1987 are hereby quashed and set aside.

19. The respondents are hereby directed to reconsider the case of the petitioner for extension of period of lease as well as for allotment of land on permanent basis in light of the observations made in this judgment.

20. The decision shall be taken within a period of six months from today. At the same time, it is further directed that the respondents, its officers and/or subordinates shall not dispossess the petitioner till the decision in this matter either for the allotment of land on permanent basis or for extension of lease period of land. This Special Civil Application partly succeeds and is allowed indicated above. Rule made absolute accordingly. No order as to costs.

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msp.